

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

U.S. COMMODITY FUTURES TRADING	§	
COMMISSION, <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
	§	CASE NO. 3:20-CV-02910-L
v.	§	
	§	
TMTE, INC. a/k/a METALS.COM, <i>et al.</i> ,	§	
	§	
Defendants.	§	
	§	
	§	

**PORTFOLIO INSIDER, LLC’S MOTION FOR LEAVE TO FILE A MOTION TO
PREVENT THE RECEIVER FROM TAKING POSSESSION OF A
NON-RECEIVERSHIP DEFENDANT ENTITY’S PROPERTY**

Non-party Portfolio Insider, LLC (“Portfolio Insider”), by and through its undersigned counsel, respectfully seeks leave to file a motion to prevent the Receiver from taking possession a non-receivership defendant entity’s property. Portfolio Insider seeks to file such motion because the Receiver has taken steps to take possession of Portfolio Insider’s property and confidential information, in interference with Portfolio Insider’s business operations. The Receiver has taken such actions based on the mere assertion that Portfolio Insider is a Receivership Defendant or Relief Entity, with no such determination from the Court.

Portfolio Insider would respectfully request that the Court direct the Receiver to immediately cease all efforts and attempts to take possession of Portfolio Insider’s property and confidential information. Unless this Court has expressly included Portfolio Insider as a Receivership Defendant or Relief Entity (and it appears there is no request before the Court to

make such a determination), the Receiver is without authority to take the actions it has taken. Portfolio Insider respectfully shows the Court as follows:

1. The Receiver's improper actions have resulted in the suspension of critical vendor services and adversely impacted Portfolio Insider's business operations.* Such actions by the Receiver are improper because a receiver has no right to property that does not belong to the entities for which the receiver was appointed. *Sec. & Exch. Comm'n v. Sethi Petroleum, LLC*, No. 4:15-CV-338, 2021 WL 2366110, at *4 (E.D. Tex. May 21, 2021) ("The receiver is but the creature of the court; [s]he has no powers except such as are conferred upon [her] by the order of [her] appointment and the course and practices of the court.") (citing *Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 371 (1908)). The Receiver previously filed a motion to identify other entities as included in the receivership; however, Portfolio Insider was not a named entity in the motion. *See* Receiver's Motion to Identify Certain Entities in Receivership (Dkt. No. 226). Although the Receiver's pending motion for an order to show cause (Dkt. No. 311) alleges that Portfolio Insider is the same entity as Retirement Insider, LLC (a named entity in the motion to identify certain entities in the receivership), such allegations require a fact-intensive inquiry to determine whether the entities are in fact the same.

2. The improper actions taken by the Receiver are without the requisite determination from the Court. *United States v. Setser*, 568 F.3d 482, 487 (5th Cir. 2009) ("A receiver takes over property only after a court has agreed with the arguments and evidence that such a takeover is necessary."). Portfolio Insider is not a party to the instant action, and is thus not a defendant.

* *See* Ex. A, Nasdaq Global Data Agreement Suspension Notice (dated Sept. 17, 2021); Ex. B, Suspension of Pipedrive Account and Services Notice (dated September 23, 2021); Ex. C, Pipedrive Notice of Compelled Disclosure of Information (dated September 30, 2021).

Further, there is no court order that includes Portfolio Insider as a Receivership Defendant or Relief Entity, and Portfolio Insider has not been served with any motion filed in this Court proceeding.

3. Accordingly, Portfolio Insider respectfully seeks leave to file a motion to prevent the Receiver from taking possession of Portfolio Insider's property and confidential information. Portfolio Insider would request that the Court direct the Receiver to (i) seek a determination from the Court regarding whether Portfolio Insider is subject to the Statutory Restraining Order (Dkt. No 16), and (ii) immediately cease all actions against Portfolio Insider unless and until such determination is made via court order. Portfolio Insider reserves its right to contest any motion that seeks to name Portfolio Insider as a Receivership Defendant or Relief Entity.

Dated: October 8, 2021

Respectfully submitted,

/s/ Scott C. Thomas

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ATTORNEYS FOR

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CERTIFICATE OF SERVICE

The undersigned certifies that counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's EM/ECF System on October 8, 2021.

/s/ Scott C. Thomas

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